



CONTRACT FOR CONVERSION OF TEN HYBRID LTVS
TO GAS-POWERED LTVS
12/5/2013

This contract is made and entered into as of the ____ day of _____, 2014, by the City of Durham ("City") and First Transit, Inc. ("Contractor"), whose principal office and place of business is in Cincinnati, Ohio.

SECTION 1 Background and Purpose

Ten Hybrid Light Transit Vehicles (LTVs) of the City's demand responsive public transit (ACCESS) fleet need to be converted from Hybrid vehicles to gasoline powered vehicles. This project will include removing all Azure Dynamic hybrid-electric components and replacing them with OEM Ford Factory parts.

SECTION 2 Services and Scope of Work to be Performed

The contractor shall convert ten LTVs from hybrid-electric powered vehicles to gasoline powered vehicles. Within 4 weeks of the award and execution of this contract, the contractor shall begin converting the LTVs. The contractor shall completely convert one LTV a week until all vehicles are reinstated into the City's active fleet.

A list of criteria detailing the necessary steps to converting the vehicle can be found in Exhibit A, the City's Request for Proposals, and includes the following:

Removing Azure Hybrid parts: DC/DC converter with wiring, traction motor controller with wiring, integrated starter generator motor controller and wiring, high voltage junction box and wiring, 12-volt battery system with wiring, integrated starter generator (ISG), vehicle control unit (VCU), electric power assist system and motor controller with wiring, high voltage service disconnect pin and low voltage interface with wiring, energy storage system (ESS); high voltage battery pack, traction motor with wiring, electrical power assist system motor and motor controller with wiring, electrical air conditioning unit (rear) with wiring,

Replacing and repairing: the cooling system (tube assembly, part# 3A713A, hose assembly, part# 3A717A, tube assembly, part# 3A713A, shroud assembly, part# 8146, clutch fan assembly, part# 8A616, radiator assembly, part# 8005, tube assembly, part# 18472D, tube assembly, part# 18472C), the drive shaft (drive shaft assembly, part# 4R602), the charging system (alternator assembly, part# 10346, alternator bracket, part# 10153, drive belt tensioner, part# 6B209, drive belt idler, part# 8678, drive belt, part# 8620), the wiring harness and power control module (engine compartment main harness, part# 12A581, transmission jumper harness, part# 7C078, engine control sensor wiring, part# 9D930, power control module, part# 12A650) and the front and rear air conditioning (compressor assembly, (front) part# 19703, compressor assembly; (rear) part# 19703A, lines and hoses, part# 19835A, 19835B, 19972A; compressor bracket assembly; 40 ft. # 10 A/C hose; 40 ft. # 12 A/C hose).

Work shall be performed with minimal impact on business operations. The City prefers work to be done during normal business hours. A successful conversion shall result in a converted

vehicle able to return to reliable operating service, needing no service other than preventative maintenance for three years, and all part and labor shall have a three-year warranty.

In this contract, “Work” means the services that the contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract.

SECTION 3 Complete Work Without Extra Cost

Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

SECTION 4 Compensation

The City shall pay the contractor for the Work as follows: the City shall pay the Contractor \$7,850 per each LTV converted in accordance with Section 3 of this contract, *Services and Scope of Work to be Performed*. Payment shall be made only for Work actually performed on each LTV and will not be made for services performed or expenses incurred prior to the date of contract and service acceptance. The total funds available for all the services to be provided under the terms of this contract shall not exceed \$78,500 for ten LTVs.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

SECTION 5 Contractor’s Billings to City

The Contractor shall send invoices to the City for each LTV when it is completed and delivered to the City’s satisfaction. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

SECTION 6 Insurance

Contractor shall purchase and maintain insurance coverage for no less than the following: Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

Commercial General Liability, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then

agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)

- Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

Workers' Compensation Insurance, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:

- Companies authorized to do business in the State of North Carolina

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:
City of Durham, North Carolina
Attention: Pierre Osei-Owusu
101 City Hall Plaza
Durham, NC 27701
- The insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Department of Transportation before Contractor can begin any work under this contract.
- The contractor shall indemnify and hold harmless the City of Durham from and against any losses, damages or claims in connection with the performance of these tasks.

SECTION 7 Performance of Work by City

Continuity of the work is based on satisfaction of performance. If the Contractor fails to perform the Work in accordance with the schedule referred to in Section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

SECTION 8 Termination for Convenience ("TFC")

(A) Procedure. Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor

written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action.

- (B) Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) Payment. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

SECTION 9 Notice

- (A) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Pierre Osei-Owusu, *Sr. Transportation Planner*
City of Durham
1907 Fay Street,
Durham, NC 27704
Fax: 919.560.1534

To the Contractor:

First Transit, Inc.
600 Vine Street, Suite 1400
Cincinnati, Ohio 45202
Fax: 513.684.8852

- (B) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following

the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

SECTION 10 Trade Secrets and Confidentiality

The request for proposals section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. The word "Proposer" used in that section shall mean the "Contractor."

SECTION 11 Indemnification.

- (A) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.
- (B) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.
- (C) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.
- (D) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.
- (E) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition

and excavating connected therewith, then subsection “a” above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

SECTION 12 E-Verify Compliance.

The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

SECTION 13 Miscellaneous

- (A) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.
- (B) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- (C) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
- (D) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.
- (E) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City’s defenses and shall be liable for all of the Contractor’s duties that arise out of this contract and all of the City’s claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that

the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(F) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(G) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(H) EEO Provisions. During the performance of this Contract the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(I) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that chapter provides, in part, "If the City Manager

determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Contractor’s alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor’s alleged violations of other obligations.

(J) Prompt Payment to Subcontractors. Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes sub-consultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham. If the City’s Project Manager determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Contractor. (b) Nothing in this section shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City’s Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(K) No Third Party Rights Created. Except as expressly stated herein, this contract is intended for the benefit of the City and the Contractor and not any other person.

(L) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this

contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(M) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

ATTEST:

CITY OF DURHAM

By: _____

Pre-audit certificate _____

First Transit, Inc.

ATTEST:

Secretary

President

(SEAL)

State of _____

ACKNOWLEDGMENT BY
FIRST TRANSIT, INC.

County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ personally appeared
before me this day and stated that he or she is _____ Secretary of First Transit, Inc., a
corporation, and that by authority duly given and as the act of the corporation, the foregoing
contract or agreement with the City of Durham was signed in its name by its _____
President, whose name is _____, sealed with its
corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the
_____ day of _____, 20_____.

My commission expires:

Notary Public